Cecil I. Walker Machinery Company, Inc. *and* Paul R. Schafer *and* Darren L. Gore. Cases 9–CA–26643 and 9–CA–26763

September 30, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On May 6, 1991, Administrative Law Judge William F. Jacobs issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Cecil I. Walker Machinery Company, Inc., Rita, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(a) and reletter the subsequent paragraphs.

''(a) Discharging and laying off employees because of their union or other concerted protected activities.''

2. Substitute the attached notice for that of the administrative law judge.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolution unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In adopting the judge's findings that the discharge of employee Gore on April 10, 1989, and the layoff of 18 employees on June 30, 1989, violated Sec. 8(a)(3) and (1) of the Act, we agree with the judge that such actions were pretexts and that the real reason for discharging Gore and laying off the other employees was Gore's and the employees' union activities. *Limestone Apparel Corp.*, 255 NLRB 722 (1981).

[3] We have modified the judge's recommended Order and notice to provide that the Respondent cease and desist from discharging and laying off employees because of their union or other protected concerted activities.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT maintain a rule requiring information regarding wages, salary, or other compensation to be kept in confidence.

WE WILL NOT unlawfully solicit grievances.

WE WILL NOT inform employees that it would be futile for them to select the Union as their bargaining representative.

WE WILL NOT interrogate employees regarding union activity of other employees.

WE WILL NOT discharge or otherwise discriminate against any of you because of your union or other protected concerted activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Darren Gore, John Casebolt, John Curry, Mark J. Curry, Michael Curry, Timothy Hatfield, Jody W. Gartin, Warnie E. Jones, Gary K. McNeil, Robert O. Meeks, Joseph A. Miller, Timothy Miller, James Ogle, Homer Pennington, Paul R. Schafer, John Spears, Robert Whitt, Richard Wiley, and Robert Zastawniak immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and make them whole for any loss of earnings or other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

WE WILL expunge from our files any reference to the unlawful discharge of Darren Gore and the unlawful layoffs of John Casebolt, John Curry, Mark J. Curry, Michael Curry, Timothy Hatfield, Jody W. Gartin, Warnie E. Jones, Gary K. McNeil, Robert O. Meeks, Joseph A. Miller, Timothy Miller, James Ogle, Homer Pennington, Paul R. Schafer, John Spears, Robert Whitt, Richard Wiley, and Robert Zastawniak, and

notify them in writing that this has been done and that the discharge and layoffs will not be used against them in any way.

All our employees are free to become or remain, or refrain from becoming or remaining, members of a labor organization.

CECIL I. WALKER MACHINERY COMPANY, INC.

James E. Horner, Esq., for the General Counsel.
Fred F. Holroyd, Esq. (Holroyd, Yost & Merical), of Charleston, West Virginia, for the Respondent.
Paul Schafer, of Chapmanville, West Virginia, and *Darren L. Gore*, of Holden, West Virginia, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge. This case was tried before me on November 7 through 9 and December 5 through 7, 1989, at Charleston, West Virginia. The charge in Case 9–CA–26643 was filed by Paul Schafer, an individual, on July 17, 1989.[1] The charge in Case 9–CA–26763 was filed by Darren L. Gore, also an individual, on August 25. The consolidated complaint issued October 5 and alleges that Cecil I. Walker Machinery Company, Inc.[2] violated Section 8(a)(1) of the Act by maintaining a rule in its employee handbook which prohibits employees from discussing their wages and other compensation, creating the impression among its employees that their union activities were under surveillance by Respondent, unlawfully soliciting grievances from its employees, informing its employees that it would be futile for them to select United Mine Workers of America (UMWA) as their bargaining representative, and interrogating an employee about the union activities of its other employees. The consolidated complaint also alleges that Respondent violated Section 8(a)(1) and (3) of the Act by discharging an employee on April 17 and permanently laying off 18 other employees on June 30 because of their union activity. Respondent, in its answers, denies the commission of any unfair labor practices.

All parties appeared at the hearing and were afforded full opportunity to be heard and present evidence and argument. General Counsel and Respondent[3] filed briefs. On the entire record, my observation of the demeanor of the witnesses, and after giving due consideration to the briefs, I make the following

FINDINGS OF FACT[4]

Respondent is engaged in the sale, rental, and servicing of material handling equipment at various locations in the State of West Virginia including Rita (Logan). Its employees at the Logan store, include mechanics, helpers, warehousemen, and parts department employees. Management at the Logan store consists of Branch Manager Tim McLean, Assistant Branch Manager Jake Gordon, and Field Service Coordinator Nathan Rowe, all supervisors[5] under the Act.

Respondent established its Logan location about 1980 and since that date its store has proven quite successful. Each year Logan has improved in terms of revenue from parts and service until by the end of 1988, it was second only to Charleston among Respondent's seven locations, in this area of business. By the end of 1988, it was anticipated that business would continue to improve and the anticipation proved accurate as the first half of 1989 reflected substantial increases in parts sales and service sales over the same period of 1988. Similarly, there were significant increases in new machine sales as well. Due to the increase in business the number of employees at Logan also increased.

Since 1982, Respondent has been in the practice of distributing employee manuals to its employees. Its most recent manual, dated January 1, 1989, contains the following paragraph:

> Confidentiality of Pay
>
> It is company policy that, in all cases, information regarding wages, salary or other compensation will be kept in confidence. Violations of this policy make those involved subject to dismissal.

The complaint alleges[6] that the maintenance of such a rule is in violation of Section 8(a)(1) of the Act. I agree and so find.[7]

Darren Gore, one of the alleged discriminatees,[8] first began seeking employment at Respondent's Logan facility in 1983 or 1984. In the summer of 1984 he filed an application for employment and took a mechanical aptitude test. The manager at the time called Gore and told him that he had passed the test and that he would call him later and tell him when to report to work. However, that manager was transferred out of Logan and Gore did not obtain employment at the time.

Gore continued, thereafter, to visit the Logan shop once or twice per week in hopes of being hired. Finally, in April 1988, he was told that he would be hired but would first have to file another application and retake the test. On April 7, 1988, Gore filled out his second job application. The application included the question, ''Are you related to any of our employees?'' Gore checked the box marked, ''No.'' He testified that he did not know of any company policy prohibiting the employment of relatives since the Logan shop, at the time, was already employing employees who were related.

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[1] Hereinafter all dates are in 1989 unless noted otherwise.

[2] Hereinafter called Respondent, Employer, or Company.

[3] In accordance with Respondent's motion, Respondent's brief is received into the record as R. Exh. 7.

[4] The complaint alleges and the answers admit that the Board has jurisdiction and that the Union is a labor organization within the meaning of the Act.

[5] Respondent admits the supervisory status of McLean and Gordon but denies that of Rowe. The record indicates, however, that Rowe has authority to, and does, in fact, independently issue employees their daily work assignments, transfer employees from one job to another, grant days off, send employees home early, and issue memoranda to service personnel containing authoritative instructions on proper job performance.

[6] Par. 5(a).

[7] *Blue Cross-Blue Shield of Alabama*, 225 NLRB 1217 (1976); *A.L.S.A.C.*, 277 NLRB 1532 (1986).

[8] Complaint, par. 6(a).

Tim McLean interviewed Gore for the job, reviewed his application, and hired him effective April 18, 1988. At the time, according to McLean, he did not know that Gore was related to two of Respondent's employees.

Darren Gore was a longtime resident of the area and many of Respondent's employees had known him for several years prior to his employment with Respondent. They also knew that Gore was related to two of Respondent's employees, Mike Curry, his uncle, and Mark Curry, his cousin. According to Gore, whom I credit, when he was first seeking employment with Respondent, when McLean was still the assistant branch manager, he told McLean to ask his uncle what kind of worker he was. Since Gore told McLean, before he was hired, that Mike Curry was his uncle, and since McLean admits to having reviewed Gore's application at the time of his interview and must have, or should have, seen where Gore checked the ''No'' box, I conclude that neither Gore's relationship to the Currys nor his denial of the same on his application were considered of any importance by McLean. Indeed, Mike and Mark Curry were already employees of Respondent when Gore was hired and Tom Bradshaw and his son were also employed at the Logan store at the time.

Respondent distinguishes Gore's case from that of the two Currys and the Bradshaws. In the latter cases, neither Mark Curry nor the younger Bradshaw denied, on their applications, being related to other employees, and the knowledge of the relationship before hiring enabled McLean to seek permission of his superiors, as required by company policy, before actually hiring the new employees. After Mike Curry asked McLean to hire his nephew, McLean did, in fact, check with higher management for permission to hire Mark and it was granted, according to McLean, provided Mark worked on the second shift, while Mike worked the first shift. McLean also obtained permission before hiring Mike Bradshaw and he was hired to work together with his father in the same department on the same shift despite the rule contained in the employee manual.

After the hiring of Gore, just about everyone was aware of the relationship between Gore and the Currys. Comments were made daily about Mark and Darren working together and by Rowe each time he sent Gore out to work with Mike. Though Mark Curry worked primarily on the second shift, he occasionally worked for Mike Curry as his helper, just as Gore did, more frequently. This was done though specifically prohibited under the terms of Mark Curry's employment, and generally prohibited under the rules contained in the employee manual.[9] On numerous occasions when Gore was assigned as mechanic's helper to Mike Curry, Rowe would say, ''I'm going to send you with your uncle today.'' Thus, management and rank-and-file employees were well aware of the relationship between Mike Curry and Darren Gore[10] and I do not believe it could have escaped McLean's notice. The relationship was common knowledge and the Respondent, after the hiring of Mark Curry and Darren Gore, was frequently referred to by the employees and even by Jake Gordon, as ''Curry Machinery.'' Since McLean admitted to hanging around with the mechanics while at work and knowing each and every one of them on a personal basis, I conclude that he was well aware all along of Gore's relationship to Mike Curry.

Sometime after January 1, Respondent distributed its new employee manual which contained, among many other things, the statement:

> You are free to terminate your employment at anytime without statement of reason. The company has the same right.

A number of employees were disconcerted by the inclusion of this provision in the manual, and the possibility that they could be fired at any time. The provision became the subject of much discussion among the employees and some were of the opinion that perhaps they might need a union to insure job security.

As a result of these discussions about union representation, Gore decided, on his own, in mid-February, to visit the UMWA (the Union), and obtain authorization cards to distribute among Respondent's employees. On or before February 28 he picked up 30 such cards from the union representative. On that date, before starting work, he advised a number of fellow employees, while in the company cafeteria, that he had union cards in the glove box of his truck and that they were welcome to get and sign them if they wanted to do so.

Between February 28 and March 7, at least 12 of Respondent's employees signed union cards. Most of them returned the cards back to Gore's truck, a few gave them directly back to Gore himself. Darren Gore and Paul Schafer signed cards on February 28, and witnessed each other's signatures; Jody Gartin and Warnie Jones signed cards on March 1, and witnessed each other's signatures; Mike, John, and Mark Curry signed cards on March 2, and their signatures were witnessed by Joseph Miller, Mark Curry, and Darren Gore, respectively; Richard Wiley, John Workman, and Gary McNeil signed cards on March 3, and their signatures were witnessed by Schafer, Gore, and Jones, respectively; and Timothy Hatfield, Bob Zastawniak, and Robert Meeks signed cards on March 7 and their signatures were witnessed by Schafer in the case of Hatfield and Zastawniak, and by Gartin in the case of Meeks. Gore testified that, although not sure, he thinks he returned 21 to 22 signed cards back to the Union. Schafer testified that employees Joseph Miller, Homer Pennington, and Jimmy Trent also signed cards but the record does not support his testimony and I find they did not.

While distributing cards to his fellow employees, Gore told them that, in his opinion, they needed a union. He testified that he notified as many of Respondent's employees as he could that he had cards in his truck. A few employees later called Gore at this home and asked him what the Union was going to do for them. He advised them that they should call the Union directly and ask that question.

Despite the involvement of more than a dozen of Respondent's employees in the union activity described, and McLean's admission that he hung around the mechanics at work and knew each and every one of them on a personal basis, he testified that he was unaware, during the first quarter of 1989, that the Logan employees were involved in any

[9] P. 19.

[10] Darren Gore and a number of rank-and-file employees testified to this fact. Nathan Rowe did not testify.

union organizing. There is, however, record evidence to the contrary.

Some time after February 28, Gore had occasion to visit the tool room at the Logan store to obtain a service manual. As he entered, he greeted the tool room man, Noah Jacobs, by asking him what was going on. Noah replied that he had heard that McLean had found out that Gore had been the employee who had distributed the union cards and was looking for a reason to fire him. Jacobs had been present along with several other employees, in the cafeteria, on February 28, when Gore had announced that he had the cards in his truck and when Schafer signed one of the cards and Gore signed it as witness. Thus, Jacobs was in a position to know of Gore's activity and to warn him of McLean's knowledge of his activity. Though Jacobs' statement does not, of course, prove the truth of the statement made, it does exemplify how information can be so easily spread among employees and from employees to management in a small plant or shop.[11] Noah Jacobs had firsthand information about Gore's union activity and Gore credibly testified that Jacobs told him that McLean was aware of it. Jacobs, however, was not called to testify concerning the matter.

More important to the General Counsel's case than Jacobs' statement to Gore is the credited testimony of Diane Starr, which proves beyond doubt that McLean was fully aware of the union activities of his employees and of Darren Gore, in particular. According to Starr, who was employed, at the time, as Rowe's assistant, she first became aware of Respondent's employees' interest in the Union in February. She explained that it was common knowledge around the shop and she knew about it because the mechanics were in her office every day, an office separated from Rowe's office by a wall. Into her office, she testified, came most of the mechanics, all talking about trying to start a union. Gore, Schafer, Meeks, all card signers, would engage in these conversations in her presence. She noted that although Logan is a highly unionized community and is prounion, she had never before heard Respondent's employees engage in conversations concerning the possibility of unionizing the Logan store until this time. She added that because the Logan store is so small, it is easy to know what is going on there.

In early March, according to Starr, McLean called her into his office, where Jake Gordon was already seated. McLean asked her, point blank, what she knew about the Union. She told him that she knew that the mechanics were trying to organize a union. McLean asked her if she thought they would succeed and she replied affirmatively. McLean then wanted to know if Starr had any more information as to how far the mechanics had gotten with their organizing efforts. Starr replied that she knew that they had signed some union cards. When McLean next asked her who the ringleader was, she told him that Darren Gore was the one who had passed out the cards. Finally, Starr asked McLean why it would be so bad for the Logan store to have a union. McLean replied that a union would be the worst thing that could happen to the Logan store.

As to the conversation between Starr and McLean described immediately above, McLean denied that it ever occurred. I have found, however, as noted, that Starr gave an accurate description of her conversation with McLean and conclude that by early March he knew of the union activity among his employees and the key role that Gore played in their organizational efforts.

The complaint[12] alleges that Respondent, through Tim McLean, interrogated an employee concerning the union activities of other employees. In light of Starr's credited testimony, I find the allegation meritorious.[13]

It was on March 8 that Gore returned the signed union authorization cards to the Union. Gore testified that he obtained no signed cards from Doug Tolar, Mark Ferguson, Darrell Cline, or Michael Sansom.

On March 9, Respondent conducted two meetings with its employees, one in the morning with its service mechanics and helpers, the other in the afternoon, primarily with its warehousemen and parts department employees. In attendance for management were Vice President for Parts and Services Joseph E. Dailey, Personnel Manager Ed Wode, McLean, and Gordon. All denied having any knowledge of organizational activity at this time.

The highlight of the meetings was the showing of a video tape film by Wode called ''Get the Facts.'' It was an antiunion film designed to convince employees of the pitfalls involved in signing union cards and joining unions. The film itself is not alleged to be violative of the Act and I do not find it so.

Dailey, Wode, and McLean all testified to how the tape was initially acquired and why it was shown to Respondent's Logan employees at this particular time. Dailey offered a charming vignette designed ostensibly to show that the decision to run the film during the height of the union organizational campaign was purely fortuitous, and that management was totally unaware of its employees' activities. I found the story amusing but unconvincing. I conclude, rather, that Respondent's showing of the antiunion film, on March 9, was an attempt at dissuading its employees from pursuing their union activities and additional evidence of management's knowledge of such activities.

It is also instructive that Wode, though personnel manager for 5 years, had never before visited the Logan store to show such a film or to discuss unions or union organizing with the employees nor, as of the time of the hearing, had he ever shown the film to employees at any of Respondent's other locations. Of the employee witnesses who had attended the meeting and testified, all stated that they had never attended such a meeting with Wode before, and virtually all said that they had never met him before. It must be concluded that this was not a meeting called in the normal course of business but a special meeting called for a specific purpose.

Prior to showing the film, Wode addressed the employees. He told them that he had a movie he wanted them to watch and that the purpose of the film was to let the employees know what unions can and cannot do. According to the credited testimony of Schafer, Wode said that the Company had heard that there was some union organizing going on at the shop and that the film he was about to show probably should have been shown to the employees when they were first hired. He added that the Company was planning to make the

[11] *Wiese Plow Welding Co.*, 123 NLRB 616 (1959); *Don Swart Trucking Co.*, 154 NLRB 1345 (1965), affd. 359 F.2d 428 (4th Cir. 1966).

[12] Par. 5(d). Complaint amended at hearing.

[13] *Liquitane Corp.*, 298 NLRB 292 (1990).

film a part of the orientation program for new employees in the future. He said that the film was about unions and how Walker Machinery felt about them. Finally, before actually showing the film, Wode stated that the Logan store was nonunion and Walker Machinery wanted it to stay that way.

After the film concluded, Wode and McLean addressed the employees. Wode stated that there was no need for a union in the Logan store; that the film depicted how management felt about it; and that any problems the employees had could be worked out with Tim, Steve, and Dick.[14] He urged the employees to get the facts, reiterating the title of the film.

After delivering these preparatory words, Wode then talked about the employee manual including those portions of it which had initially caused the employees to contact the Union, and other portions which concerned them generally. Wode alluded to page 1 of the employee manual, cited in part supra, which states:

> Because of certain court decisions we advise you that this manual is not a contract for employment unless otherwise stated, but is your employment at will. You are free to terminate your employment at anytime without statement of reason. The company has the same right.

With regard to this paragraph, Wode told those present that he had heard that there had been a little bit of grumbling and some controversy because some employees felt that, in effect, this employee manual did not mean anything; that whereas previously a lot of people had looked at their employees manual as establishing the employees' rights and duties in their relationship to the Company, this paragraph seemed to say that the employees could not hold the Company to anything stated in the manual; that the manual was worthless insofar as the employees could depend on it to protect themselves. He followed up this statement of understanding by arguing that he did not know why the manual not being a contract should become and issue at this time because the same language had been contained in the previous manual and West Virginia law required the inclusion of such a statement.

Wode also addressed that section of the manual dealing with the confidentiality of pay. He noted that this was a new section in the manual which provided that talking about wages among employees could be grounds for dismissal. He told those present that two people in another store had been fired because they had been talking to each other about their wages and this had caused a lot of turmoil. He warned those present not to discuss their wages.

As noted earlier, the complaint[15] alleges that Respondent violated Section 8(a)(1) of the Act by maintaining a ''Confidentiality of Pay'' provision in its employee manual. Wode's speech on the subject clearly indicates that Respondent intended to fully enforce that provision. Its enforcement would necessarily interfere with its employees' rights to engage in concerted activity and its mere maintenance, as I have already found, is violative of the Act.

After Wode briefly touched on such subjects as life and health insurance and the 401K plan, McLean addressed the employees. Like Wode, McLean told the assembled employees to, ''Get the Facts'' before they signed cards or did anything about union organizing. He stated that Respondent was a service company, not a coal company, and had been the most consistent employer over the past 5 years.

The complaint[16] alleges that Wode, on March 9, created the impression among its employees that their union activities were under surveillance by Respondent. I find that the activities of Wode, his showing of the film and statements made during the meeting of March 9, fully discussed above, are insufficient to support the allegation contained in paragraph 5(b) of the complaint.[17]

On March 16, Stephen Walker visited the Logan shop and spoke with several employees. As noted earlier, on March 9, Wode had suggested that if the employees had any problems, they could work those problems out with certain named members of management including Walker. Walker approached Warnie Jones on March 16 and engaged him in conversation. Although Walker had previously visited the shop on occasion, he had never before engaged Jones in personal conversation. This time Walker interrupted Jones while he was working on his truck and asked him if he had any problems. Jones climbed off his truck and he and Walker discussed several problems which Jones felt he had, including a compensation case and his pay. Walker told Jones that previously he had tried to stay away from the branches and let them build an identity of their own but he could see where that had given rise to problems. He promised that the Logan employees would be seeing more of him in the future.

In the context of the conversation concerning Jones' problems, Walker commented that the employees did not need a union at the Logan store, especially not the UMWA. Jones, in reply, admitted that he had been making a pretty good living working for Respondent, but admitted further that he also had signed a union card. He said it was not something that he felt he should hide but that he knew of other employees who had signed union cards and that that was a matter between the Company and them.

The complaint[18] alleges that, on or about March 16 or 17, Respondent solicited grievances from its employees in violation of Section 8(a)(1). The above-described facts reflect that the allegation is meritorious.[19]

On March 22, Stephen Walker again visited the Logan shop and for the first time addressed the assembled employees. Some of the employees had never before seen Walker. Virtually the only subject he discussed was unions or union contracts.

Walker opened his speech by stating that he had heard that there was some union organizing going on in the store and that there were people who were trying to get the employees to sign union cards. He told his employees that the Logan store had always been nonunion and he intended it to stay that way; that he would do everything in his power to keep the Logan store from going union. He said that the employees did not need a union; that they could work out any prob-

[14] Tim McLean; D. Stephen Walker, president, chief operating officer, and corporate coowner; and Richard B. Walker, chairman of the board, chief executive officer, and corporate coowner.

[15] Par. 5(a).

[16] Par. 5(b).

[17] *Page Avjet, Inc*., 278 NLRB 444 (1986).

[18] Par. 5(c)(i).

[19] *Reliance Electric Co*., 191 NLRB 44 (1971), enfd. 457 F.2d 503 (6th Cir. 1972); *Briarwood Hilton*, 222 NLRB 986 (1976).

lems that they had through the Company; and that they could call him day or night or work out such problems with McLean, Gordon, or other members of management. He warned, however, that if the Company ever signed a contract with the Union, such talks between the employees and management would end because everything would have to be negotiated.

Walker warned the employees that if they went union, they would just be hurting themselves; that if they signed a union card or joined the union, they were signing a pact with the devil. He said his father had let the union in at the Charleston store and that it was the worst mistake he ever made; that he regretted it till the day he died; and that he, Stephen Walker, was not going to let that happen at the Logan store.

Walker advised the employees that he had the best union busting lawyers there were and that he had never lost but one case since he hired them. He named the lawyers and said that they specialized in defeating union organizing activities. He described one as an exmarine, somebody that he would not want to tangle with.

Walker stated that he did not have to sign a contract, if he really did not want to; that he had been through contract negotiations before and had not signed one. He added that he would never sign another union contract; that he had been through strikes before and had outlasted them.

Walker then described to his employees the bargaining tactics which he intended to use if negotiations were required. He declared that the employees would start with a clean sheet of paper. He told them that if he had to negotiate a new contract, the employees would lose all their benefits and he would renegotiate all their insurance and other benefits. He said that if he had to negotiate wages, he would go for a pay scale based on the lowest qualified man's abilities so that the higher paid people would lose money; that after a contract was negotiated, the highest paid employee then, would be receiving the same pay as the lowest paid mechanic was receiving before negotiations. Thus, he said, he would put a freeze on wages and back up and pay every man what the lowest paid man was worth so that everyone would take a wage cut except the lowest paid man.

As to working conditions at the currently unionized stores, Walker stated that in all the years that he had been involved with such stores, the Employer had lost only one grievance and that had been just recently.

The complaint[20] alleges that Respondent, acting through Walker, on March 22, informed its employees that it would be futile for them to select the Union as their bargaining representative and thus violated Section 8(a)(1) of the Act. After having considered the above-described content of Walker's speech, I find the allegation meritorious.[21]

Immediately after Walker had finished his speech, while the employees were finishing up their paperwork, Mike Curry, Darren Gore, and Paul Schafer began discussing, among themselves, what they should do next. They had planned to invite a union representative to come in and talk to all the employees and tell them what a union could and could not do. In light of Walker's speech, however, their initial plan did not appear feasible so Curry asked Walker if the employees could have the use of the conference room for a few minutes to talk among themselves. Walker agreed and the members of management who had been in attendance left the room.

At the brief meeting of employees which followed, it was decided that they had better get all the employees together and talk about what they wanted to do. They determined to hold a meeting some nonwork day in the future to talk about the situation. Mike Curry then went into McLean's office and asked him if the employees could hold a meeting in the conference room on Sunday, April 2. McLean told him that they could do so as long as there were no union officials present. Curry agreed to the stipulation and the meeting was scheduled.

The meeting of employees was held as scheduled on Sunday, April 2, in the conference room. Almost all the hourly employees attended but no member of management. Mike Curry volunteered to take charge of the meeting just to get things started. He gave a general overview of the situation at the Logan shop. He noted that a number of employees had signed union cards and were investigating the possibility of having the UMWA organize the store. He said that in light of Walker's speech, however, maybe the employees should vote on whether to go ahead with the union organizing efforts or, in the alternative, try to talk to the Company to see what kind of answers management would give to the problems, and grievances that the employees had with the Company.

After some discussion, the employees voted on the issue presented and decided that they would rather talk to the Company, present the employees' problems and obtain management's reaction before going any further with their organizational campaign.

Following the vote, it was decided that the employees should prepare a list of grievances to present to Walker. Curry suggested that spokesmen be elected to get all the material together and to present the grievances when ready. He suggested further that two employees be chosen from the service department and one from the parts department since the service department was larger. This was agreed on and subsequently Mike Curry and Paul Schafer were elected to represent the service employees and John Workman to represent the parts department employees.

The rest of the meeting was taken up with collecting information concerning individual grievances and problems which the three spokesmen would eventually present to management. An outline of main topics was prepared which the spokesmen intended to summarize for later presentation.

The three spokesmen and a few other employees met briefly after the general meeting and decided to meet the following weekend to put together a final product after gathering additional grievances through the week. They planned a second general employee meeting to get the approval of their product from the other employees before presenting it to management. Union organization was on the back burner.

The following day, April 3, Mike Curry and Schafer visited McLean to tell him what had transpired the day before at the employee meeting. They told him of the election of the three spokesmen and that they were working on a list of grievances which they planned to present to the employees then, if approved by them, to Walker. McLean offered to

[20] Par. 5(c)(ii).

[21] *Madison Industries*, 290 NLRB 1226 (1988).

give them time off, on company time, later in the week, to work on the list and they accepted his offer.

On Thursday, April 6, Rowe told Mike Curry and Schafer to stay in the shop that day because McLean wanted them to get together with Workman to work on the grievance list. Since Workman was on the second shift, he had to be called in special and arrived about an hour after work had started.

The three committeemen went into the conference room and discussed the project. They felt they were probably wasting their time but since the majority had voted to try to negotiate directly with their Employer, they would do the best they could. They felt that none of them had any experience whereas the Company had lawyers and experience both. They decided to make out a general list of grievances rather than attempt to draw up a contract, present the list to the employees first, then to management and gauge by the response of management whether the Company was seriously dealing with them or not. They worked for a couple of hours and finally came up with a finished product which they gave to Workman to have typed and reproduced for distribution.

On Friday, April 7, Workman and Schafer happened to meet. Workman told Schafer that when he reported to work on the afternoon of April 6, McLean confronted him in the warehouse and asked him where his list was. Workman explained that they were just working on it, that they had not yet finished. McLean commented that he *thought* that Workman was one of the ringleaders.

A few day after the April 2 employee meeting, Workman had heard rumors to the effect that he had been nominated and elected by the parts department employees only because if there was any flak that came down from management over the problem of the employees making demands on management, he would take it and they would be in the clear. After hearing these rumors and being confronted by McLean and called a ringleader, Workman confronted the other parts department employees on the evening of April 7 with the information he had received. They freely admitted that the reason they had elected him as spokesman was that they did not think that McLean liked Workman very much anyway and if anyone was going to get fired, it might as well be him. They admitted that that was why they had nominated him. Since Workman had accepted the nomination with the understanding that he would be the direct representative of the parts employees, and they would back him up in that position, he felt betrayed. Although the other parts department employees apologized for what they had done, Workman decided to resign as their spokesman. The following day, he described to Schafer what had happened, tendered his resignation, and did not participate further in the employees' efforts at bettering their working conditions through direct dealings with management. No one replaced Workman as spokesman for the parts department and Mike Curry and Schafer carried on alone as a committee of two. Subsequently, Workman also advised McLean of his resignation from the committee. Workman denied that his conversation with McLean, in which McLean called him a ringleader, had anything to do with his resignation from the committee. I do not credit his denial. Indeed, I find that Workman switched allegiances in order to keep his job, which, unlike the rest of the card signers, he did.

At this stage of the scenario, it is clear that the Company had successfully blunted the union organizational drive by offering to deal directly with its mechanics in their concerted effort to better their working conditions under the leadership of the two remaining members of their committee. McLean's conversation with Workman, however, just as clearly indicates some dissatisfaction with the newly organized activities of the employees.

Meanwhile, as of mid-March, Mark Curry had been absent from work for about 3 months due to an on-the-job injury. When he returned, he was put on the day shift, the same shift worked by Mike Curry, his uncle, and Darren Gore, his cousin. Mark worked the day shift for several weeks[22] before being told by McLean that he was being transferred back to the second shift.

When Mark was told that he was being transferred back to the second shift he objected, stating that he preferred to work on the first shift. He argued that he had more seniority than several other employees on the first shift. McLean ignored Mark's argument and insisted on the transfer without providing further explanation.[23]

Mark Curry worked the second shift about 2 weeks. He was dissatisfied and still objected to being assigned to the second shift while three or four other employees, with less seniority than himself, continued to work the first shift. He must have recalled, at this time, Steve Walker's mid-March invitation to the employees, to call him personally if they had any grievances because Mark Curry did just that.

When he contacted Walker, he asked him why he could not work first shift and whether there was a problem with him and Mike Curry working together because they were related. Walker replied that he had no problem with Mark and Mike Curry working together on the same shift adding, ''I can hire your daddy, if I want to . . . . It don't matter what goes on, as long as Mike doesn't sign your paycheck.'' When the rule in the manual concerning the employment of

[22] The length of time during which Mike Curry continued to work on the first shift after returning from his injury is in dispute. Personnel records were introduced by neither party.

[23] McLean testified contrary to this finding but is not credited because of inconsistencies in his testimony discussed infra. According to McLean, during this conversation he reminded Mark Curry of a stipulation to which they had agreed when Mark was hired, to the effect that because of Mark's relationship to Mike Curry, they would not work on the same shift. He testified further that he told Mark, at this time, that this stipulation was the reason for his transfer to the second shift.

Mark Curry testified that there never was such a stipulation and that he never was told that he could not work the same shift as his uncle; not at the time of his hire, nor at the time of his transfer back to the night shift.

McLean testified further that when he reminded Mark Curry of the alleged stipulation, Mark replied that there were other related employees working on the same shift and so he should be permitted to do so also. When McLean stated that he was unaware of this fact, Mark explained that Darren Gore and he were both nephews of Mike Curry.

Since I have credited Mark Curry's statement that McLean never gave him a reason for his transfer to the night shift, I find also that Mark Curry, in effect, denied that this extended conversation ever took place. I find that McLean subsequently created the alleged conversation, out of whole cloth, in order to establish a basis for his contention that he suddenly, for the first time, learned that Darren Gore was the nephew of Mike Curry, and to establish a pretext for his discharge.

relatives was mentioned, Walker stated that it did not matter what the manual said, that he owned the place.

Shortly after Mark Curry's conversation with Walker, he was transferred to the day shift where he worked with Darren Gore until the latter's suspension and with Mike Curry until both were laid off on June 30. The content of the conversation between Steve Walker and Mark Curry and the subsequent transfer of Mark Curry prove, beyond question, that Respondent had no serious problem with relatives working together.

Of course, Walker would not have made the actual transfer himself, but would have had to go through McLean to get Mark's transfer accomplished. In the process of scheduling the transfer, Walker would necessarily have had to review with McLean, his conversation with Mark and the content thereof, including their discussion about the rule in the manual regarding the employment of relatives. It may have been at this time that it occurred to management, that the rule could be used to get rid of Gore.

On April 10, according to Gore, he and Mark Curry were called into McLean's office. McLean asked Gore if he was kin to Mark Curry. Gore admitted he was. McLean then asked if Gore knew, when he was hired, that it was against company policy to hire kin. Gore answered that he did not. McLean then said that Gore was suspended until further notice, that he would let him know in 2 or 3 days what would happen next. He told Gore to leave, that he wanted to speak with Mark. Mark Curry though present during this critical conversation was not called to testify by either party concerning its content.

McLean's testimony concerning Gore's suspension and eventual discharge is at variance with that of both Mark Curry and Gore. McLean testified that while Mark was still on second shift he had a conversation with him wherein Mark told him that he and Gore were nephews of Mike Curry.[24] In connection with this already discredited testimony, McLean further testified that the first thing he did after hearing of Gore's relationship to Mike Curry was to check Gore's application which indicated that he was not related to anyone.[25] He then called both Mark Curry and Gore into his office and asked Gore if he was kin to Mark Curry. Gore admitted being related to both Mark and Mike Curry. McLean then asked if he knew, when he was hired, that it was against company policy to hire kin. Gore replied in the negative. When next asked why he had not put that information on his application, he replied that he did not think it mattered. McLean then informed Gore that the omission was grounds for dismissal and that if he had the information up front when considering Gore for hire, he probably would not have hired him. He then told Gore that he was suspended until further notice, and would let him know something in 2 or 3 days. He told Gore that he could leave; that he wanted to talk with Mark.

After Gore left the office, he met Mike Curry just outside and told him that he had been suspended. Shortly thereafter, McLean came out of his office and called Mike in. Once there, McLean explained to Mike Curry the situation and the reason for Gore's suspension. He told Mike Curry that he had no idea that Darren and Mark were kin to each other. Mike, after some further discussion, said that he kind of thought all along that McLean knew that he was Darren's uncle. At this statement, McLean threw his hands up and said he never knew that Mike was Darren's uncle, that he just thought he was kin to Mark.

In light of McLean's own testimony to the effect that he had been told by Mark Curry, while he was still on the night shift (testimony which has been discredited) that he and Darren Gore were Mike's nephews, and had just been told the same thing minutes before by Darren Gore, I find McLean's feigned surprise at hearing it for yet another time, a disingenuous attempt to convince Mike Curry of the truth of the pretext on which he had just suspended Gore. I find that the inconsistencies in McLean's testimony seriously undermines his overall credibility.

Mike Curry and Tim McLean continued their conversation, with McLean explaining that he had suspended Gore because he had put on his application that he was kin to nobody at the Company. He admitted knowing that Mark was kin to Mike, up front, when he hired Mark and so that was different.

Following his suspension, Gore tried all week to find out his status. He visited the store and talked with McLean and called up both McLean and Steve Walker but neither would tell him whether he was fired or still under suspension.

Meanwhile, the employees' list of grievances, dated April 14, was typed and duplicated. Workman supplied a number of copies to Schafer and Mike Curry who brought them to the second employee meeting which took place on April 16. Workman, having completed his task, reiterated his position that, henceforth, he would no longer be involved in committee activities.

The meeting of April 16 was attended by a majority of Respondent's employees but not nearly as many as had attended the first meeting. True to his word, Workman did not attend. He told Mark Curry that he did not attend because he was afraid of losing his job. Others failed to appear because they had simply lost interest.

Schafer and Mike Curry generally ran the meeting. They distributed copies of the list of grievances to all who were present. They asked the employees to read it and decide whether or not they wanted to make any amendments. They explained that they did not think that they could negotiate a contract with management because they were not capable of doing so but felt that they could submit this list of grievances to management to see what response there was and to determine if the Company was serious in dealing with the employees. Mike Curry opined that if management wanted to talk about the list of grievances, the matter probably would go further but, as of then, this was just something to let the Company know what the employees' grievances were.

The employees read the list of grievances, discussed its content, decided that it was fine the way it was, and voted that it be submitted to management. Schafer then commented that he thought submitting the list to management was a waste of time but if that was what the men wanted, that is what would be done. He noted that a number of employees had not come to this second meeting because they were afraid of what had happened to Gore. He said that he could

[24] Ibid.

[25] It is not unheard of for an employer who is disturbed by an employee's participation in protected activities, to suddenly decide to review his application in hopes of finding a discrepancy to use, as a pretext for discharge. *Campbell 66 Express*, 238 NLRB 953 (1978), enfd. denied 609 F.2d 312 (7th Cir. 1979).

understand their not wanting to lose their jobs and thinking they could distance themselves from what those in attendance were trying to accomplish. But, he added, whether or not the employees attended the meetings, there had been enough cards signed to ensure a representation election, and when the day came to vote, everyone would look as guilty as he, when they went in to cast their ballots.

Discussion turned to the suspension of Darren Gore. Mike Curry mentioned to the employees that the Company had suspended Gore and McLean had said it was because he was related to Curry. However, Curry testified, the majority of employees present at the meeting believed that Gore had been disciplined because he had brought the union cards to work and management found out about it. Those present knew that Gore had been suspended and that management refused to tell him whether the suspension was temporary or, in fact, a termination. They felt that Gore was being wrongly treated and that something should be done about it besides merely talking about it. At least he should be given a straight answer. These feelings were voiced by several of those present.

After a good deal of discussion, it was suggested that, to show their support for Gore, the employees staged a sickout the following day. A vote was taken and it was agreed on. It was suggested that each employee should obtain a doctor's excuse. Later that evening, the employees not present at the meeting were called and advised of the sickout.

After the meeting, and before he the left shop, Schafer placed a copy of the list of grievances in an envelope and slipped it under the door to McLean's office for him to find Monday morning. A second copy was mailed to Stephen Walker the following day.

On Monday, April 17, in accordance with the decision arrived at the day before, almost all the employees failed to report for work. Almost none of them called the shop to report they would be absent but most of them brought in doctor's excuses when they returned to work.

At 6:30 the morning of the sickout, Gore visited the Logan store and talked with McLean. He asked him what his status was, whether he was fired or suspended. He asked McLean whether or not he was going to be put back to work. McLean replied that he would let Gore know in a minute. He then went into his office, talked to somebody on the phone, then came out and told Gore that he was terminated and could look for another job. Gore asked for a reason for his termination but McLean answered that he would receive an official statement along with his final check. Gore eventually received his paycheck but no explanation.

The complaint[26] alleges that Respondent terminated Gore because of his protected concerted activities in violation of Section 8(a)(1) and (3) of the Act. In support of this allegation the record reveals that Gore was the initial primary organizer for the UMWA; that he was responsible for virtually all the distribution of union cards among Respondent's employees; that he obtained almost all the signatures thereon; and that he collected all of them and turned them over to the Union. The record also reveals that management obtained knowledge of Gore's activities; demonstrated through the commission of 8(a)(1) violations its antiunion animus; and terminated him in timely fashion. I find that counsel for the General Counsel has presented a prima facie case.

Respondent takes the position that Darren Gore was terminated for cause, that cause being that he falsely denied in his application for hire that he was related to any other individuals employed by Respondent. The record reveals, however, that everyone at the Logan installation was aware of the relationship between the Currys and Gore, some at the time of hire and even before, including Norman Rowe, the dispatcher and supervisor under the Act. I cannot credit the denial of McLean, that he alone was ignorant of the relationship between the Currys and Gore, particularly in light of his admission that he hung around with the mechanics at work and knew each and every one of them on a personal basis.

Moreover, the record also reveals that Respondent employed other sets of relatives who worked occasionally or regularly with each other on the same shifts. I conclude that Gore's relationship to the Currys was used as a pretext to terminate Gore and that the true reason for his termination was his organizing activities on behalf of the Union.

On the morning of April 18 there was an accident on the highway leading to the shop which resulted in a traffic jam which lasted about 45 minutes. Schafer was caught in the backup and as he was seated in his truck, waiting for the backup to clear, McLean, also caught in the traffic, walked up to Schafer's truck, got in, and engaged him in conversation. He asked Schafer what yesterday was all about, referring to the sickout. He asked if it meant that the employees were not going to negotiate something with the Company. Schafer replied that, officially speaking, he had been sick on Monday but that most people were very upset about Gore's situation, especially that it could not be resolved in a week. McLean then informed Schafer that he had terminated Gore the day before. Schafer replied that he thought that McLean should expect a charge to be filed with the National Labor Relations Board (NLRB) over Gore's firing. McLean then informed Schafer of Respondent's ostensible reasons for Gore's termination. Schafer replied that the rest of the employees were left with taking McLean's side of the story or Gore's and asked, ''Who are we going to believe?'' Thus, this part of the conversation ended with a line clearly drawn between management on one side and Schafer and the majority of employees on the other side along with Gore.

Continuing the conversation in Schafer's truck, and getting back to the subject of negotiations, Schafer advised McLean that, as far as he knew, the employees were going to continue talking to the Company but there would have to be another employee meeting to see what they wanted to do because he, Schafer, could not make a decision for everybody. McLean then asked Schafer if there were going to be any more sickouts and Schafer said that he did not think so, but did not know.

McLean then mentioned that he had received the list of grievances, had looked through them, and thought they could probably work some things out. He added that it would take a while to work on it.

On the morning of April 18 the employees who had participated in the sickout reported to work. McLean asked for doctors' excuses and took them from those who had them. He told the mechanics gathered in the conference room that he had to know if he could depend on them to be there for work because he had jobs for them to do.

[26] Par. 6(a).

A meeting between management and the employee committee was finally scheduled for April 25. On that day, Schafer and Mike Curry were brought into the conference room to discuss the April 14 list of grievances with Walker, McLean, Dailey, and other members of management. Walker did most of the talking throughout the meeting and began by stating that he was not there to talk about the previous Monday (sickout) but was there to talk about the list of grievances and what the Company could do about them. He added that the Company needed more information because management did not understand what the employees wanted with regard to some of the items. The discussion then proceeded in a more or less exploratory vein.

The parties went down the list, item by item. Walker and occasionally McLean would ask the two committee members what they meant by a certain provision and what the Company could do about another. According to Mike Curry and Schafer the subjects of training, layoffs, pay scales or wages, job posting, vacations, and work during inclement weather were all discussed. With regard to increased training, Walker announced that a new training director had been hired and a new training program would be established. Concerning layoffs, Walker said that the Company tried to give their employees advance notice of layoffs; that they had worked with employees to get some kind of time sharing or shifting before actually laying anybody off; and laid people off on the basis of seniority when their qualifications were equal. On the subject of pay scales and wages, Walker asked Schafer what the employees wanted. Schafer replied that the Company's competition for labor was the UMWA and the union scale was $16.50 per hour. Walker then said that there was no way that Walker Machinery would ever pay that much; that he could not pay what a coal miner made because his was a service company. He said he could not afford to pay union scale, then offered a brief explanation about the amount of work done by the Company, the amount of revenue received, and how it was decided how much the Company could pay its employees. With regard to job posting, Walker asked Curry what kind of job posting the employees wanted. Knowing Curry had been a mineworker, he asked him how the UMWA did it. Curry explained the system but Walker stated that there was no way the Company would ever go to that rigid a job posting set up. Concerning vacations, Walker explained how the Company was going to take care of the scheduling of employees' vacations. Finally, as to the employees' grievance involving working in inclement weather, a revised policy was apparently announced. According to Mike Curry, a few minor grievances were resolved at this meeting. According to Schafer, nothing was resolved.

Although none of the larger issues and few of the less important issues were resolved at the meeting, the parties appear to have treated each other cordially and with respect while discussing the various problems listed. When the meeting was about to break up, however, Walker asked if anyone else had anything to say. Curry said that he did, then said that speaking for the employees of the Company, it would be of great benefit to the success of their negotiations, if the Company would reconsider Gore's situation. Schafer added that he thought what had happened to Gore, ''would cast a long shadow over our proceedings with the grievance list.'' These remarks were greeted with total silence. No one said anything for about 30 seconds. Finally, Walker simply said ''okay,'' then everyone got up and left the meeting.

At one point during the discussion, Dailey asked Schafer and Curry how the other employees were going to find out about what they talked about that day. They replied that they would have to call another employee meeting to inform them of the results of the committee's meeting with management. After the meeting was over and management had left, Curry and Schafer decided to request permission of McLean to have the meeting on company time. McLean granted permission for two employee meetings, one with the second-shift employees that afternoon and another the following day with the first shift.

Both employee meetings were conducted in the same fashion. Schafer told everyone that he had taken notes during the meeting with management and that he was going to tell them, without bias, exactly what the Company's response had been. Then, he said, if the employees wanted to know his personal opinion of the meeting, he would tell them. Schafer then read through his notes and told those present, point by point, management's reaction to each of the grievances contained in the list. When he was then asked his opinion, he told them that he thought they were wasting their time. He said he thought that management might make a few superficial changes, but nothing serious was going to come of the negotiations. Curry joined Schafer in his opinion and stated that he too, thought they were probably wasting their time.

After completing his report on the results of the meeting and offering his opinion, Schafer addressed the gathered employees on the subject of the Union. He told them that when the employees signed union cards, it had been a serious matter. He stated that the process of organizing had been started and even if employees failed to attend meetings, it was not going to stop the union organizing campaign because Darren Gore had been fired for his participation in it. He added that the least the employees owed to Gore was to continue with the organizing campaign until they had a union representation election, whether or not an agreement was reached with the Company through the committee's negotiations with management.

Thus, by late April, Respondent's management was dealing directly with the employee committee in an attempt to keep the Union out while the committee, consisting of two strong union adherents, was negotiating with management and, at the same time, continuing the union organizing campaign and attempting to get Darren Gore reinstated to his job.

As of May, Respondent's business was good and improvement was contemplated. Its employees were working full time and overtime was mandatory. This was true although there was picketing at certain mines.

On May 11, McLean conducted a meeting with the service employees. He told them that management did not have a written response to everything on the list of grievances but it had been working on it and wanted to let the employees know what it had accomplished so far. Memos on tool policy and on inclement weather policy were distributed, but nothing was said about the more difficult issues such as seniority or pay scales. Schafer therefore asked McLean about these other matters. McLean replied that management would get back to the employees on the other matters contained in the

list in a couple of weeks. After the meeting, Schafer discussed it with other employees and concluded that there was little substance to management's offer.

In June, the UMWA's strike against the Pittston Coal Company spread south, and a number of mines were being picketed in the Logan area. In normal times, during June and July, the mines close down for two 2-week periods while the miners take vacation. During these periods, Respondent would ordinarily take the opportunity to service equipment at the mines, and available work would increase dramatically. With the strike and picketing in progress in 1989, however, Respondent's management did not know what to expect. Eventually, however, sometime before June 12, McLean learned that the annual vacation for the miners, previously scheduled for June 26 through July 8, had been rescheduled for mid-July, so the expected increase did not occur.

When the strike began, Dailey contacted the managers of the stores to advise them of the Company's position with respect to informational picketing. That position was that pickets were defined as persons carrying signs at places of business where the pickets had a primary labor dispute with the business being picketed. Picketing of places of business where the pickets had no labor dispute with that business, wildcat picketing, was in a different category, according to Dailey. Strike-bound property, he defined as property where pickets were present in either case, but if a picket came and then left the entrance to a business or mine, that property was not strike-bound property and he expected his service employees to go onto those jobs and get the work done for Respondent's customers.

Dailey testified that it was Respondent's position that it did not want its employees to put themselves in physical jeopardy by crossing picket lines. It wanted them, when faced with picketing, to call the shop and advise management of the situation so that the service personnel could be sent to another job. According to Dailey, Respondent had collective-bargaining agreements at three of its stores and arrangements had been made with Local 132 of the Operating Engineers concerning picketing. The arrangement was that Respondent's employees could only go through a picket line if it first obtained permission from the aggrieved union, but if there were no pickets, Respondent's employees could enter onto the property and get the work done whether or not there was a strike in progress. This is what Respondent expected its Logan employees to do also.

Prior to January 12, the UMWA picketed only Pittston facilities. On that date, however, pickets appeared at UMWA mines and facilities throughout southern West Virginia, wherever B.C.D.A. contracts were in effect, and a series of wildcat strikes broke out at various locations including sites in Logan County. Reports of the strike and of violence accompanying the strike appeared in newspapers. Respondent's mechanics reported for work at certain locations, saw pickets, and turned around and left. Some mechanics would fail to go to work, according to McLean, even when there were no pickets at the site. Whereas there had been a lot of work and Respondent's employees worked a good deal of overtime in early June, as of June 12, with the advent of the wildcat strike, actual hours worked suddenly decreased.

After sporadic primary picketing in early June, the number of mines being picketed dramatically increased beginning June 12, until virtually all union jobs were shut down. Initially, according to Schafer, Respondent's employees were not affected by the Pittston strike. Eventually, however, they were because they would not cross picket lines nor work on strike-bound property which, unlike Dailey's definition, included struck property, even when no pickets were present. Reports of violence appeared in the newspapers and the subject was widely discussed throughout Logan County and among Respondent's employees. These reports played a role in the decision of employees not to cross picket lines, and it did not matter whether the picket line was legal or illegal.

Schafer testified that he consistently told company officials that he would not work on strike-bound property, that it was just a waste of time and the Company's money to send him to strike-bound property because he was not going to work on it. He stated that he did not expect management to send him out just to pay him for 2 or 3 hours' driving time only to return without doing any work, and was always surprised when they did it.

Michael Curry also testified that he too refused to cross any picket lines and that reports of violence played a part in his decision not to cross. He grew up in Logan County, he stated, was aware of what could happen to people who crossed picket lines and was frightened for his safety. He testified further, that if, at a particular worksite, there had been picketing earlier, but the pickets had left, he still would not work on that property. He described the pickets as usually dressed in camouflaged T-shirts and khaki army-type camouflaged pants. Whereas pickets carried signs at Pittston locations, they did not do so at wildcat locations. According to Michael Curry, groups of these wildcat pickets would move from one site to another, picket for 2 or 3 hours, then move on to the next site. He was afraid of going onto a site which the pickets had just left because they might return, a hundred strong, and he would then be faced with either staying on the property or suffer the consequences of having to go through the picket line to get off the property.

Pickets showed up at both the Charleston and Logan stores on or about June 12. Newspapers carried reports of widespread violence and rumors of the same came to the attention of Respondent's employees. They would be assigned to jobs at customers' locations, arrive there to find pickets, then return to the store. Attempts to contact the mechanics at customer locations were unsuccessful and it appeared to management, according to Dailey, that for the first time, Respondent had an undependable work force at Logan. Mechanics based at Charleston, Beckley, and Huntington would work at sites where pickets had come and gone, but not the Logan mechanics. Although the Logan management agreed that the mechanics were not expected to take the risk of going through the picket lines, they were expected to go on customer properties and do their assigned jobs, once the pickets left. This, for the most part, the mechanics refused to do.[27] They expressed concern for the safety of themselves, their personal vehicles, and property.

According to Respondent, after June 12, as a result of the picketing, as it affected customers and Respondent, there was a drastic decrease in parts-sales-orders (PSO). The decrease in PSOs was greater at the Logan store than any other, although there were decreases in some of the other stores.

[27] McLean testified that employees Homer Pennington, Mike Parks, and Mark Ferguson actually crossed picket lines.

With the loss of revenue due to the refusal of the Logan mechanics to go through the picket lines or even enter onto struck worksites where there were no pickets, management attempted to get certain employees to agree to fly onto these properties by helicopter. Most, if not all, refused for fear of violence and on philosophical grounds. This occurred on the morning of June 20. When the employees refused to fly over picket lines or onto strike-bound property, management assigned several mechanics to nonunion jobs and told the rest to go home because there was no other work available. Those sent home were told that they would be called when needed. Paul Schafer was among those employees who received job assignments to nonunion jobs that morning. He received the assignment despite the fact that he had made it clear that he would not cross picket lines or work on strike-bound property both for reasons of safety and philosophy and it did not matter whether the worksite was the target of a primary or a wildcat strike, legal, or otherwise. In all, seven employees received assignments that day, four of them card signers. Assignments appear to have been made on the basis of seniority with no evidence of discriminatory motivation. Indeed, one card signer was transferred to the second shift to replace a younger employee who was sent home, in order to give work to the card signer. Those mechanics who were sent home received 2 hours showup time. If they had been willing to work on strike-bound property, there was work available for everyone.

On June 21, the same seven employees who worked on June 20, again received assignments. In addition, two employees who had been sent home the day before received assignments. Both had signed union cards. Thus, six of the nine employees who worked June 21 were union adherents.[28]

On Thursday morning, June 22, McLean called a meeting of the service personnel in order to explain to them the position of the company with regard to the Pittston strike. He told them that Walker Machinery was a service Company, not a mine, and that it was obligated to service its customers. He again advised them that the Company was neutral with regard to the primary strike at Pittston locations. With regard to secondary locations, he said that he did not expect the mechanics to cross where pickets were present but did expect them to work where there were no pickets. He stated that the Company was willing to stagger starting times to avoid pickets if it had to implement that option. He presented the injunction which the court had issued against the union locals and explained that it was illegal for anyone to try and stop Walker Machinery Company from conducting its business. He then stated that he needed to know from each individual whether he was willing to work and whether he, McLean, could depend on him. He told them that he was giving them 24 hours to decide and get back to him. At this point, Schafer spoke up and said that he did not need 24 hours to think about it, that ''he would not work scab'' or on union jobs.

When the meeting was over, McLean said, ''Anybody that has a job, let's get to it. Everybody else can go home.'' According to Respondent's field service schedule for that day, 11 employees were given assignments. Six of the 11 were given to union card signers.

When the meeting ended, Schafer remained seated, filling out some paperwork. When he had finished, he stood up and found McLean standing beside him. McLean looked at Schafer and said, ''I guess your going home.'' Schafer asked, ''How come?'', since the field service schedule for that day had Schafer scheduled to work at the same nonunion jobsite where he worked the day before. McLean replied, ''Because you refused to work.'' Schafer denied that he had refused to work and said that he wanted 24 hours to think about it, like everyone else had. He added that he did not think that he would change his mind, but he did want to think about it. McLean said, ''Well, I guess you'll have to think about it at home.'' Again, Schafer asked, ''How come?'' McLean replied, ''Because I'm sending you to Old Hickory today.'' Both McLean and Schafer were aware that Old Hickory was a union job which had been shut down by the wildcat strike and was being picketed, so Schafer asked, ''Are those my only choices? To go to Old Hickory and work on this struck job or go home? If those are my only choices, then I guess I'll probably go home.''

After working an additional half hour on more paperwork, Schafer approached McLean and said, ''Tim, I just want you to understand, I'm not refusing work today. I just want the same 24 hours to think about it that you gave everyone else.'' McLean replied that he understood that. He added that he was not trying to put anybody on the spot and he understood that this was a difficult situation. He explained that he had plenty of work and wanted to get it done. He told Schafer to think about it and expected Schafer's answer by 8 a.m. the following day. He said that Schafer did not even have to come to the shop; that he could call him on the phone.

Respondent's field service schedule for June 22 indicates that the Old Hickory job had been tentatively assigned to employee Jimmy Trent and was transferred to Schafer immediately after he made his position known that he would not work on union jobs. I find that McLean transferred Schafer in retaliation for making the statement he did. I do not, however, find a violation because none was alleged.

Certain employees did not attend the June 22 meeting. Some of those, but not all, were given the same message individually by McLean. According to McLean's records, four employees agreed to work at union locations where there were no pickets, four refused to do so, and the rest did not decide immediately. According to one witness,[29] the employees were all in agreement that they would not work on strike-bound property.

At the time of the meeting, there was plenty of work for Respondent's employees to perform. A majority of Respondent's customers, however, were members of BCOA[30] and were victims of secondary picketing or considered by Respondent's employees as strike-bound even if no pickets were present. Respondent had solicited much of this work and had agreed to perform the necessary services within a specific time period, namely during the miner's vacation period. For this reason, McLean had to know if his employees were willing to do the work. That was the reason for the

[28] I have relied on company records to make these determinations. Where testimony is not in agreement with these records, I do not credit the witnesses.

[29] Robert Zastawniak.

[30] Bituminous Coal Operators Association.

meeting and he told the employees this at the meeting of June 22.

During the meeting, after McLean had finished his explanation of the Company's position, some of the employees wanted to know what would happen if they decided that they would not work on strike-bound property. McLean replied that he did not know but he was going to have to make some kind of personnel adjustments.

Whereas, between June 12 and June 22, pickets would occasionally appear at the Logan store for varying periods of time, on June 23 the first mass picketing of the store was undertaken. Fifteen or so pickets, dressed in camouflage pants, shirts, and sometimes hats and wearing red bandannas over their faces, blocked the driveway to the store. None of the pickets carried signs but their outfits identified them as UMWA members, outfits typically used to picket secondary employers.

As each employee approached the shop and saw the pickets massed at the railroad track, near the shop driveway, he turned around and went home or to a nearby restaurant where other employees had gathered. None of the employees had to ask questions of the pickets because they recognized the situation as similar to the secondary picketing occurring throughout the area. Nevertheless, some of the employees drove up close to the pickets where they were told that, indeed, it was a picket line, and were asked not to work. None of the rank-and-file employees crossed the picket line that morning but members of management did. McLean's truck was pelted with rocks as he went through the line and it suffered a flat tire as well.

There is no evidence in the record as to precisely why the UMWA chose to undertake mass picketing at Respondent's Logan store on that particular morning. An immediate effect of the picketing, however, was that it prevented McLean from meeting with his employees and obtaining from them their positions with regard to the 24-hour ultimatum which he had issued the day before.

Early in the afternoon of June 23, after the pickets had gone, Gordon called Schafer at his home and told him to bring his service truck to the shop; that for security reasons, management wanted to have all of the vehicles returned to the compound. Schafer asked Gordon what was going to be done about work in the future. Gordon replied that he did not know. Schafer asked whether or not he should take his tools off the truck and Gordon answered that it was up to Schafer. Schafer said that he would unload some of his tools, then bring the truck in.

Later, that afternoon, when Schafer arrived at the shop's parking lot to deliver the truck, he approached McLean and asked what they were going to do next. McLean replied that he did not know and asked Schafer if he had any good ideas. When Schafer replied in the negative, McLean simply said, ''We'll call you.'' Although the conversation would appear to have come to a conclusion, Schafer, at this point, added, ''Well, I just want you to know, Tim, that I don't want to cross any picket lines and I don't want to work on any strike bound property.'' McLean then turned to employee Zastawniak, who had accompanied Schafer back to the shop, and asked him if he felt the same way. Zastawniak replied that he did, and he and Schafer left.

On Monday morning, June 26, when the employees reported for work at the shop, they found that the pickets had returned. Some employees went home, others turned and drove back to the restaurant which they were in the habit of frequenting. In a while, McLean and Gordon stopped by the restaurant and told one of them, Warnie Jones, to return his truck to the shop. After McLean and Gordon left, the employees decided that since no one knew how the Company intended to deal with the situation, Schafer should call McLean and schedule a meeting. He did so and arrangements were made for the employees and management to meet in the parking lot of a nearby vocational school to discuss the situation. This place was chosen in order to avoid the pickets who had picketed the shop that morning and who might return. On June 26, only one employee, Darrell Cline, worked that day. The pickets remained all day but Cline had arrived at work before the pickets had come.

The meeting took place at 5 or 5:30 p.m.. McLean, Gordon, and Rowe all attended the meeting. The employees asked them what was going to happen. McLean replied that there was plenty of work to be done, both at the store and in the field, enough to last a month, and it was their decision as to whether they would do it. He said that if they would agree to work behind picket lines, he would provide transportation to work and the protection of the state police while crossing the picket lines. The men objected that they did not want to cross picket lines. McLean then agreed that they should not cross picket lines and endanger themselves but should work at sites where there was a strike but no actual picketing going on—strike-bound property. The men, however, advised McLean that they would not work on strike-bound property either, because of fear that if they entered onto the strike-bound property, a picket line might be established behind them, and they would be unable to get out without going through the line.

One employee suggested that McLean lay off the mechanics or give them low earnings slips, presumably while the wildcat strikes were in progress, so they could draw unemployment insurance. McLean replied that he could not justify a layoff while there was work available. That, he said, would be illegal. He then suggested, in turn, that it might be a good time for employees who had vacations coming, to take them at this time. Employee James Ogle had 2 weeks' vacation coming and decided to take advantage of McLean's offer. He began vacation June 26 and was not due to return to work until July 4.

During the meeting, one employee stated that the reason that the Logan store had been picketed was because McLean had directed his mechanics to go onto strike-bound property. He suggested that McLean talk with the UMWA to get some relief, McLean testified that he did not know, at the time, what the employee meant by ''relief'' and did not know that the pickets were UMWA pickets. He also testified that he asked his employees if they thought the pickets were UMWA pickets and they said they did not know. He further testified that he was unaware, at the time, of the extensive involvement of his employees with the UMWA. I find McLean's testimony on this matter disingenuous, at the very least and I do not credit him.

Clearly, Schafer was the spokesman for the majority of the mechanics. Schafer and this majority consistently refused to work on strike-bound property. When, on June 22, McLean lay down the 24-hour ultimatum, he found mass picketing at his place of business the very next morning, by individuals

wearing what everybody in Logan County knew to be the UMWA's uniform of choice. Then on Monday, as picketing continued at the shop, he was told at the meeting by his employees that the picketing was initiated because he had told his employees to work on strike-bound property and he should talk to the UMWA about it. With this set of facts staring McLean in the face, it is ludicrous for him to testify that he did not know who the pickets were and that he did not know of his employees' involvement with the UMWA.

On the morning of June 27, the pickets again returned to the Logan store. A number of employees reported to work but turned around when they saw the pickets and went home. Employee Darrell Cline had been told the evening before by Gordon that there would be work the following day; to contact employee Tim Hatfield and to report in to work the following morning after the pickets left. Cline called Hatfield and both worked a full day on June 27 as did employee Mike Parks. Of the three who worked, Hatfield was the only card signer.

On June 28, there were no pickets at the Logan shop and 15 of the 20 mechanics showed up for work and were given assignments. Of the five employees who did not receive assignments that day, Schafer stayed at home voluntarily for personal reasons, and of the other four, only one was a card signer.

Of the 15 employees who received assignments that morning, 4 of them were sent to Tug Valley, a nonunion jobsite. Of these four, two, Jody Gartin and Warnie Jones, had signed cards. The other two, Joe Miller and Mike Parks, had not. The other 11 employees who worked that day, worked at the shop. The Tug Valley job was not completed on June 28 although the mechanics worked all day and some overtime. There remained additional work to be done on the project.

On Thursday, June 29, there were two pickets, once again, in the driveway of the Logan shop. Only two employees worked that day—Darrell Cline and Mike Parks. Cline returned after the pickets left and worked the whole day in the shop. Parks went to Tug Valley where he had worked the day before. Other than these two mechanics, none of the others returned after the pickets left and none called the shop with excuses for their absences. They either went home or to the restaurant.

About half an hour after McLean and Gordon went to work, saw the pickets and realized that the employees were going to honor the picket line, they too went to the restaurant. They told Schafer and the other employees there that the Company had obtained an injunction limiting the number of pickets to three and prohibiting the pickets from threatening, coercing, or intimidating the employees in any way. He added that the pickets could not stop or even talk to the employees, that he had plenty of work, and wanted and needed the employees to come to work.

Schafer reminded McLean that there was still a picket line there and that it did not matter how many pickets were on the line. He said that the situation was unchanged. After some additional unsuccessful coaxing by McLean, he and Gordon left and Schafer and the other employees eventually went home.

As of June 29, there was still work in progress at Tug Valley. Of the four mechanics assigned to that job on June 28, Jody Gartin, Warnie Jones, Joe Miller, and Mike Parks, only Parks worked there on that job on June 29. The other three refused to cross the picket line at the Logan shop where the equipment was stored, and did not go to Tug Valley that day.

On June 30, there were no pickets at the shop. All employees reported for work except those who had never been recalled after being sent home on June 20. These were Casebolt and Whitt, employees who are named in the complaint, along with others, as discriminatees. Neither had signed union cards. Whitt appears, from the record, to have been the youngest, in seniority, of Respondent's mechanics. The record is silent as to Casebolt's seniority.

Darrell Cline, who had been working on days when the shop was picketed, was given an assignment to work in the shop on June 30.

Mark Curry, a card signer, who had been honoring the picket line, reported to work on June 30 but was sent home because, McLean testified, he was not dependable. He had not worked the day before, would not work on strike-bound property, and was not expected in that day.

Gary McNeil and Rick Wiley, both card signers, who had been honoring picket lines, were given a single assignment at the Hobet mine located near B&C Coal Company.[31] As they exited the main highway onto a two-lane dirt road, leading to the jobsite, they received a message over their CB, to the effect that employees were not working at the site toward which they were headed, and they might as well go on back to the shop. They ignored the statement and drove on, intending to make an effort to get to the job. When they got about halfway to the job, they came on a red truck parked broadside in the road. A voice came over the CB stating, ''We're on strike out here. You guys might as well go back.'' Wiley attempted to make a three point turn, but before he could get back on the road, the truck was hit by three or four rocks, one of which hit the windshield, another of which damaged the hood. Wiley and McNeil headed back to report the incident to Rowe.

Meanwhile, Mike Curry and Warnie Jones had been assigned to work at the B&C Coal Company. Jones, who had been in the middle of the nonunion Tug Valley job on June 28, was surprised to find that the parts and equipment for that job had been removed from his truck and that he had been reassigned to B&C. Other mechanics had been sent to Tug Valley, presumably from other branches.

Curry and Jones left the shop after McNeil and Wiley. As they approached the B&C jobsite, they saw pickets.[32] Two were on the railroad track, near the entrance, and one was hiding in the nearby weeds. At that point they received a message over the CB from McNeil and Wiley who advised them of the rock throwing incident in which they had just been involved. Jones, on hearing of the rock throwing incident, and fearing that the picket in the weeds might be planning to throw rocks, turned his truck around and left.

Curry and Jones stopped at a public telephone to advise Rowe of their failure to obtain entrance to B&C. They were joined, shortly thereafter, by Wiley and McNeil. Curry called Rowe, told him what had happened to the four employees and asked him what they should do. Wiley also discussed the matter with Rowe. Rowe advised all four to return to the

[31] Also appearing in the transcript as P&C.

[32] B&C employees were not on strike but the UMWA was picketing, nevertheless.

shop, which they did about 9:30 a.m. Rowe then told Jones to go home but then Gordon came out and told him that he might have some work scheduled for Monday and would let him know by 5 p.m. At 5 p.m., Rowe contacted Jones and said there would be no work scheduled for Monday, July 3.

Curry was also sent home but volunteered to go to Charleston to pick up his truck which had just been repaired. Rowe agreed to this and Curry was paid for both time spent going to and from the jobsite and to and from Charleston.

Mark Ferguson, an employee of Respondent since 1984, testified that at the time the union cards were being distributed, he was aware of it, but chose not to sign a card. Although company records indicate that Ferguson was absent on those days when the Logan shop was being picketed, he testified that for 3 or 4 days prior to the layoff, he was permitted to keep a company truck at his home, and each day he would drive from his home to Marrowbone Development, a nonunion jobsite, where he was assigned to work. On June 30, Ferguson worked at Marrowbone once again. There were no pickets at Marrowbone that day, nor at any other time. Ferguson testified that it was his policy, despite receiving threats, to work wherever he was assigned, as long as there were no pickets there at the time. Thus, Ferguson, unlike most of Respondent's mechanics, was willing to work on strike-bound property. Despite his willingness to work strike-bound assignments, Ferguson continued to work at Marrowbone from June into September.

On June 30, union card signers Jody Gartin and Tim Hatfield showed up for work but were both sent home with the explanation that there was not much need for helpers that day, that there was nothing for them to do.

Robert Meeks, a card signer, was one of Respondent's more senior mechanics, having been hired in 1980. He had requested and had been granted permission to take vacation about this time and, like Ogle, was still on vacation on June 30.

Joe Miller, a mechanics helper, had not signed a union card. When he reported for work on June 30, he was told that there were just so many jobs available so he and some of the others were being sent home and would be called back as needed. As noted earlier, Miller had been working on a pan at the Tug Valley mine along with Jodie Gartin. The job had started on June 28, had been interrupted to some extent by picketing at the Logan shop on June 29, and was expected to last at least 3 weeks. Although Miller had not worked at Tug Valley on June 29 because there was picketing at the Logan shop where the trucks were parked, he was available to work at Tug Valley on June 30. Instead, he was sent home.

Joe Miller, during the wildcat strike period refused to cross any picket lines for fear of retaliation or injury. Thus, he had refused to cross the picket line on June 29 to pick up the truck to go to Tug Valley where there were no pickets. Nor did he phone in later or report directly to Tug Valley. He testified, however, despite this fact, that he would work on strike-bound property.

Mike Parks, a mechanic who had not signed a card, was sent to the Tug Valley jobsite. He was the only one of four mechanics and helpers who had worked there on June 28 who returned there on June 30. However, he was the only one to report to Tug Valley June 29, when the Logan shop was picketed.

Homer Pennington, a mechanic who had not signed a union card, had been sent home on June 20 and never recalled. He was marked absent on June 30.

Michael Sansom, a helper who had not signed a union card, was sent home on June 20 and did not work again until June 28. That day, he was assigned to work with Ferguson who, as noted above, was working at the nonunion Marrowbone job. Though he is listed as absent on the June 29 field service schedule, and Ferguson's name had a question mark after it, it is quite possible that he worked with Ferguson at Marrowbone. On June 30, he worked again with Ferguson.

Paul Schafer reported to work half an hour late on June 30, along with Bob Zastawniak, the mechanics' helper, with whom Schafer usually rode to work. He reported along with Zastawniak to Nathan Rowe's office. Rowe told Schafer that he would be sent to Old Hickory that day and that he had nothing for Zastawniak and he could go home. Schafer asked Rowe if Old Hickory was not one of the jobs that was being picketed and shut down due to the wildcat strike. Rowe admitted that it was. Schafer then asked rhetorically, ''Well, I'm not going to get much work done there, then, am I?'' Rowe replied that he did not know. Schafer asked, ''Well, do you want me to drive over there and to try to go to work?'' Rowe replied that he did.

After obtaining permission to take the truck home and load it with his tools, Schafer did so, then proceeded to Old Hickory. When he arrived about 11:30 a.m., he found one gate locked and so proceeded to the second gate where he found three pickets on duty. He decided that he would not cross the picket line, turned around and returned to the Logan shop where he told Rowe what had happened. Rowe told Schafer that he could go home.

That morning, before Schafer left to prepare to go to Old Hickory, Gordon told him that there would be no work Monday, July 3. However, about noon, when Schafer returned from Old Hickory on June 30, Gordon told him that he thought there had been a change in plans and that Respondent's employees were going to work on Monday. He told Schafer that he would call him that evening to let him know one way or the other.

With regard to the Schafer assignment on June 30, to Old Hickory, McLean testified that when Schafer returned to the Logan shop, he reported that the gate was locked. He testified that he had reason to believe that Schafer was lying because he had received a call from Old Hickory, a couple of hours after Schafer had left the shop. The customer had wanted to know where the mechanic was, since there were no pickets at the jobsite, and the mechanic had not yet shown up. McLean, surprised, tried to get Schafer, who was still in transit, on the radio, but was unsuccessful. After another hour had passed, Schafer arrived back at the shop and told Gordon and Rowe that the reason he was not working was because the gate was locked at Old Hickory. Subsequently, apparently during a second conversation between McLean and the customer, the customer advised McLean that there was no gate at Old Hickory. The record does not reflect that McLean ever confronted Schafer concerning the lack of a gate at Old Hickory but, then again, the opportunity never arose.

Doug Toler, a mechanic who did not sign a union card, reported to work on June 30 and was assigned work in the

shop on the coke truck and in the toolroom. From the field service schedules it would appear that Toler's job between June 20 and 30 was to service the coke truck(s).

James Trent, a mechanic who did not sign a union card, received an assignment on June 30 when he reported to work.

From the above it is clear that most of Respondent's employees reported to work on June 30. In part, this may have been because there was no picketing of the Logan shop that day. However, it may also have been due to McLean's announcement that employees would not receive Fourth of July pay unless they worked Friday, June 30.

On June 30,[33] Respondent mailed out identical letters, over the signature of E. M. Wode, to 18 of its Logan employees containing the following relevant paragraph:

> This is your layoff notice, effective July 1, 1989. Due to the extensive loss of business and the restructuring of our operation you are further notified that as a result of this layoff you have no reasonable expectancy of recall.

No advance notice had been given to any of these employees. Wode testified that he was made aware of the forthcoming layoff of Logan employees when he received a telephone call while he was on vacation. He also testified that he was not aware, at the time, of how Respondent planned to pick up the slack for the work previously performed by the laid-off employees because that was a function of the service department.

McLean testified that he saw the June 30 layoff notice before it was mailed and that he participated in the decision to lay off the employees. Although McLean denied that the layoffs were really discharges, he admitted that they were permanent and that the Company decided, prior to June 30, not to recall any of the laid-off employees. McLean also admitted that the employees laid off on June 30 included some of the more senior, more capable employees at the Logan facility. Finally, McLean testified that the laid-off employees have not been replaced and that what little field work remained was transferred to the Charleston store.

Prior to the June 30 layoff, employees with special skills would be dispatched from Charleston to work in the Logan area. Logan mechanics would occasionally be dispatched to other jurisdictions as needed. Record testimony indicates that, prior to June 30, there might be one or two trucks from Charleston working in the Logan area at any given time. The mechanics would complete the job, then return to Charleston unless the work load was such, that their services were needed for longer periods.

According to Joseph Dailey, after June 30, the amount of work performed in the Logan area by crews from the Beckley, Charleston, and Huntington branches increased by two crews per day, that is, two trucks with a couple of mechanics in each. These and the four Logan mechanics, who were not laid off, were expected to service customers in the Logan area. Mark Ferguson, one of the four mechanics who were not laid off on June 30, testified, however, that he had conversations with McLean about the laid-off employees. He mentioned to McLean that he thought the Company could use some of the laid-off mechanics; that their expertise was needed, particularly on certain types of equipment; and that there was too much work for him to perform. He pointed out that whereas he, Schafer, Mike Curry, and Meeks were capable of performing the necessary work on certain equipment, taking care of several jobs at once, he could not be in more than one place at a time and the other mechanics, kept on the payroll after June 30, were untrained in the performance of the job requirements. McLean's reply was that they would simply have to handle things the best they could for now.

McLean testified that after June 30, what jobs were left to be done were nonunion jobs, where there were neither pickets nor harassment. These were done, according to McLean, by employees sent out of Charleston. These employees made their repairs, then returned to Charleston. If continuity of the job required, the Charleston field service employees were required to spend nights on the road, in the area of the jobsite, at company expense. Open charge accounts were kept by the Company at various motels in the Logan area for the purpose of maintaining room and board for the Charleston mechanics.

A week or two after the June 30 layoff, Joseph Dailey called a meeting of the employees still employed at the Logan shop to explain the situation. He stated that if business did not fall off any further, there would be no additional layoffs. He said that if it were necessary to lay off any of the employees still employed, the layoff would be temporary, they would be put on low earnings and would be called back. He told those present that they were in a different category than those employees who had been laid off June 30.

Dailey also testified concerning operations in the Logan area after June 30. He testified that Respondent saved more time by dispatching mechanics from Huntington, Charleston, and Beckley to the Logan area than by dispatching the Logan shop employees from the Logan shop to jobsites in the Logan area. Respondent offered no substantiating documentation to support this assertion, which I find, on its face, to be incredible. Charleston is at least an hour's drive from Logan. In explanation, Dailey testified that before June 30, the Logan mechanics would first report to the Logan shop where they would spend 20 hours doing paperwork, thus wasting 25 percent of their time before being dispatched to their jobsites. After June 30, however, the mechanics from the other branches saved these 2 hours by going directly to the jobsite. I find the explanation inane. If the Charleston mechanics could be sent directly to the jobsite from their homes, so could the Logan mechanics and, indeed, the record indicates, that in some cases, they were. Moreover, the record testimony is devoid of any explanation as to why Logan mechanics had to keep records while Charleston mechanics did not.

On cross-examination, Dailey denied that it was more expensive to send mechanics to Logan and put them up at a motel than it was to dispatch mechanics out of the Logan shop who lived in the area. I find Dailey's testimony on this matter also incredible, as I do his statement that customers did not care that they were having to bear the additional cost of food, lodging, and travel for mechanics from Charleston and other branches.

Finally, Dailey admitted that, in effect, Respondent replaced the Logan employees, who would not work on strike-bound property, with employees from other branches who

[33] Certain of the 18 employees named in the complaint did not receive their notice until they reported for work on July 5. These were Paul Schafer and Robert Meeks.

would work on strike-bound property. This statement, I do credit.

On July 7 the following notice was posted at Respondent's Charleston location:

NOTICE

MEMO TO: Charleston Service Employees
FROM: Steve Kittle
DATE: July 7, 1989
SUBJECT: Field Service Job Opportunities

Due to potential increases in the amount of field service work, you are advised that an increase in the Charleston Field Service force is being considered.

Qualified personnel who are interested in working as a field service mechanic will be interviewed during the week of July 10–14, 1989.

Those qualified personnel must be willing to work long hours, second or third shift situations, occasional weekends, and to stay away from home up to a week at a time.

Interested persons should notify your supervisor, or myself no later than Wednesday, July 12, 1989.

Steve Kittle

Kittle is the parts and service manager for the Charleston branch. He posted the notice in accordance with the provisions of the collective-bargaining agreement in effect at that location. With regard to this notice, Dailey testified that it was posted because of a new contract it had signed with Cyprus Mining Company in Kanawha County, where Charleston is located. In the absence of documentation or testimony indicating where the mechanics would be working if they volunteered for the jobs offered in the notice, and in accordance with record testimony to the effect that Charleston mechanics were subsequently sent to the Logan area, I conclude that the purpose of the notice was to recruit Charleston mechanics to replace the laid-off Logan mechanics.

On July 12, a letter was sent from management in Roanoke, Virginia, to Steve and Dick Walker, in Charleston. One of the topics covered in this letter concerned the need for improving Logan's technical functions. The writer of this letter, one W. P. Fusco, stated with regard to Logan's failure to improve its technical support function, ''I recognize that part of this was due to the recent labor problems there.'' The importance of this communication and the reference to ''labor problems'' at Logan lies in the fact that despite the apparent absence of any union activity at the Logan shop, during the several weeks preceding the June 30 layoff, management was nevertheless concerned, at that time, with ''labor problems''—either the organizing efforts of its Logan mechanics, or the refusal of these mechanics to go through picket lines or to work on strike-bound property because of fear or sympathy with the UMWA's objectives. Whichever, labor problems were clearly not a dead issue at the time of the mass layoff of June 30.

On July 17, Paul Schafer and Jonathan ''Mike'' Curry filed the charge in Case 9–CA–26643 which alleges that Respondent had laid off 18 employees on June 30 and which requested that a full investigation be undertaken because the majority of the individuals laid off had signed authorization cards to join the UMWA.

The complaint alleges that the 18 individuals named were laid off because of their union or concerted activity. In his brief, General Counsel contends that the 18 employees were discharged rather than laid off, because of their union activity and because they acted in concert in refusing to cross stranger picket lines.

Respondent, in its brief, contends that the 18 employees were laid off because they refused to cross picket lines and were permanently replaced for lawful business reasons. Respondent also contends that the laid-off employees have been placed on a preferential hiring list and will be recalled if business improves.

In support of Respondent's position that the June 30 layoff was economically motivated, both Dailey and McLean testified on the subject. Dailey testified that one reason for the layoff was the loss of jobs due to the failure of Respondent's employees to work on them if there were pickets present or if the job was on strike-bound property. A second reason was the loss of parts orders. Dailey admitted, however, that there was plenty of work to be done and much overtime to be worked after the layoff. McLean testified that the loss of the mechanics resulted in a loss of business in the parts department.

Diane Starr, Respondent's service clerk, testified that she handled the service orders and billing and was therefore familiar with the amount of business available at the time of the layoff. She stated that when she heard of the mass layoff, she was shocked. She admitted that business had been slow for a couple of days because of the wildcat strike but there was safety work and vacation work to be done. She testified that there was plenty of work including machines in the shop on which the mechanics could have worked and the mechanics' trucks always needed some work done on them. Starr admitted that although there was plenty of work to be done, in some cases, it was not getting done.

Mark Ferguson, one of the mechanics who was not laid off on June 30, testified that his work schedule after the layoff was pretty much the same as it had been before the layoff. He worked on the average, at least 60 hours per week, and could have worked 70 hours, if he chose to do so. There have been occasions, on the average of 3 days per week, when Ferguson would work 12 hours straight.

After the layoff of June 30, the customers previously serviced by the laid-off mechanics were thereafter serviced by mechanics out of the Charleston, Huntington, and Beckley branches. Ferguson named 14 mechanics who had been sent to the Logan area to do the work previously done by the Logan employees laid off on June 30. These men made up the five or six crews who worked in the Logan area after June 30. According to Ferguson, whom I credit, they would stay several days at a time in the Logan area at a local hotel or motel. After a week, their places would be taken by another crew. The number of out of town crews, in the Logan area, increased after June 30, and Logan used as many of these crews as it could. Ferguson's testimony was supported by that of other witnesses. From this credited testimony, I conclude that, at the time of the mass layoff, much work was available to be done and that mechanics from other branches were used to do this work.

A comparison of the employees laid off on June 30 with those whom Respondent decided to keep reveals some rather surprising facts. Thus, Respondent clearly paid little or no attention to seniority. It laid off its most experienced and most valuable journeymen mechanics—Schafer, Wiley, and Meeks, and kept only one senior mechanic—Parks, along with several junior employees. Of the seven mechanics' helpers employed by Respondent, as of June 30, it laid off the five most senior employees. Of the three warehousemen laid off on June 30, Respondent subsequently called back two; the two with the least seniority.

In the business world where there are legitimate economic reasons for a reduction in force, an employer will normally retain his better, more experienced employees and lay off his least valuable, least experienced, and newest employees. Where an employer follows the opposite procedure, as in the instant case, one may infer that the layoff was motivated by other than purely legitimate economic considerations.

Following the mass layoff, several employees called McLean to inquire about returning to work for the Respondent. One of these, Jonathan ''Mike'' Curry, was told by McLean, that customers were not calling and that he did not have any work. He added, however, that he had given Curry's name to another employer. When Curry asked why McLean had done this, McLean replied, ''Well, I guess you're looking for a job aren't you?'' Curry said, ''Well, I don't know. Should I be? Does that mean I should be looking for a job; that I'm not coming back to work?'' After hesitating briefly, McLean replied, ''That's exactly what that means.''

I find this conversation instructive. At a time when Respondent had four or five crews from the Charleston branch coming down to the Logan area to do the Logan mechanics' work, McLean is telling Mike Curry, an experienced journeyman mechanic with no problems with his employment record, that he has no hope of reemployment with Respondent.

In a second incident of note, Joe Miller, a mechanics helper, returned to the Logan shop to pick up his tools. While there he engaged McLean in conversation. He asked McLean if work had picked up. McLean replied in the negative. Miller then asked him if any of the employees who had been laid off were going to be called back to work. McLean answered that he had been told that if any of the laid-off employees should ask that question, he was to tell them, ''No.''

Miller then asked McLean how ''he had decided to have this layoff that he had had.'' McLean said that he had had people working on nonunion jobs that did not have pickets on them, and since they had already started those jobs, he determined to let them continue to work. Miller then inquired, ''How come you laid me and Warnie Jones and Jodie Gartin off because we had started a job at Tug Valley on the pans. There were no pickets there.'' McLean did not reply. Miller's question remained unanswered through the hearing.

Not all the laid-off employees remained in layoff status. Robert Whitt, a mechanic, with only 2 months' seniority, the youngest mechanic on the payroll, was rehired to work at the Beckley branch. John Spears, a truckdriver and warehouseman with Respondent since September 1988, was rehired as was Tim Miller, a warehouse employee with only 2 months' seniority. Miller was rehired as a truckdriver. Both were brought back to the Logan shop.

On June 30, Respondent determined to lay off certain employees and to keep certain other employees employed. Respondent chose to lay off all the card signers; employees who refused to go through picket lines or work on strike-bound property. Thus, as of June 30, Respondent employed 13 journeymen mechanics. Six of them had signed union cards during the union campaign the previous February and March. Respondent terminated all six and kept none. Respondent kept four journeymen mechanics, none of whom had been involved in union activity. Of the three mechanics who had not signed union cards but who were laid off along with the card signers, one moved out of the area and one was rehired.

As of June 30, Respondent employed seven mechanic's helpers, four of whom had signed union cards. Respondent terminated all four along with Joe Miller, a helper who, though he may or may not have signed a card himself, was involved in obtaining one card, and signing as witness for another card signer. Of the seven mechanics helpers, Respondent chose to keep only the two youngest ones employed. Neither one had been involved with the Union.

As of June 30, Respondent employed five warehouse employees and truckdrivers. Only one, John Curry, had signed a union card. That day Respondent terminated Curry and two other warehouse employees. Subsequently, however, the two warehousemen who had not signed union cards, were rehired.

As noted supra, the only parts department employee who had signed a union card was Workman and he, early in the campaign, abandoned his prounion position, following a conversation with McLean. Subsequently, he adamantly refused to have anything to do with the Union or with the concerted efforts of his fellow employees to obtain improved working conditions. One parts department employee was laid off, James Ogle.

Thus, the Respondent, on June 30, successfully rid itself of every single card signer. It kept no prounion employees. In all, it laid off 12 union activists and kept 11 employees who were not involved with the Union. Of six nonactivists laid off on June 30, it rehired three. Clearly, by the numbers alone, a pattern emerges which indicates that the June 30 layoff was discriminatorily motivated.[34] When the pattern is perceived in light of Respondent's history of violations and antiunion animus, the violation becomes even more obvious.[35]

Respondent's defenses are four in number. It contends that the layoffs were the result of business considerations, primarily a decrease in parts orders, a corporate restructuring, a lack of communication from service personnel to the shop when faced with pickets while out in the field and, finally, a decision simply to lay off any employee who did not work on June 30.

In support of its economic defense, Respondent offered into evidence selective documents which reflect a decrease in the number of parts sales orders. I find the documentation lacking as proof of a decrease in business since the number of orders does not reflect the number of parts sold. An order may be for one part or a hundred parts. Moreover, there was

[34] *Otis L. Broyhill Furniture Co.*, 94 NLRB 1452 (1951); *Fairprene Industrial Products*, 292 NLRB 797 (1989).

[35] Ibid.

only 1 employee laid off from the parts department[36] whereas there were 10 mechanics and helpers laid off from the service department and no documentation was offered to reflect a decrease in service orders. Rather than rely on Respondent's documentation and the testimony of management witnesses, I shall rely on the testimony of Ferguson and Starr which, as noted, indicates that there was plenty of work available and lots of overtime, including work to be done at sites which were neither picketed nor strike-bound, and most of which work was to be performed by the five or six crews sent down to the Logan area from Charleston, Huntington, and Beckley to replace the laid-off Logan employees. Thus, I reject Respondent's defense based on economic or business considerations.

Similarly, I reject the defense based on Respondent's contention that the layoff was the result of a corporate restructuring program. No documentation was placed in evidence which predated the June 30 layoff. No documentation was offered which reflected that the June 30 layoff was a preplanned restructuring program whereby the Logan mechanics would be replaced by mechanics from other branches. The only documentation offered to support the restructuring defense were letters dated after the layoff, containing self-serving and extremely vague references to conversations, which allegedly occurred some 18 months before the layoff. I conclude that what restructuring actually occurred, namely, the displacement of Logan mechanics by mechanics from other branches, was not the cause of the June 30 layoff, but the result. In short, there was no restructuring.

With regard to Respondent's contention that it laid off its Logan service employees because they failed to communicate, McLean admitted that he never disciplined, threatened to discipline, nor warned any employees concerning their failure to communicate with the home office when out in the field. Moreover, seven employees were called to testify concerning their failure to communicate from the field when faced with picketing, and each testified that he had never heard any complaints from management on this subject. I conclude that if such a problem ever existed, management would have, at least, brought it to the attention of the employees responsible. There is no evidence that this was done. I therefore find that no such problem existed and that the defense is ill founded.

Finally, Respondent's position that on the afternoon of June 30, Dailey and McLean chose for layoff, those employees who failed to work that day, and chose to keep, all those employees who did, in fact, work that day, regardless of seniority, experience, capability, specialization, expertise, or any other logical basis, is incredible. No one can successfully run a business based on such an approach. On the other hand, that appears to be what happened. Those employees who worked on June 30 remained in Respondent's employ and those who did not, were permanently laid off.

But Respondent's explanation as to the basis for the choice of employees to be laid off, though if fits the facts, does not answer the ultimate question. For the fact that certain employees worked on June 30, while others did not, was not a matter of fortuity, but was rather the result of a carefully orchestrated management plan to rid itself of prounion employees. Thus, as noted above, on June 28, the Logan shop was not picketed and most employees worked. On June 29, Logan was picketed and only a few employees worked. Then, on June 30 when, once again, there were no pickets, and most of the employees reported for work, Respondent acted to selectively schedule employees to work or not work depending on their prounion propensities or lack thereof.

So, Paul Schafer, a card signer and known union activist, was sent to Old Hickory, a union job, which everyone knew was being picketed. Though he objected to the assignment, he was nevertheless sent to that jobsite, refused to cross the picket line and, to no one's surprise, did not work that day.

Warnie Jones, Joe Miller, and Jody Gartin, all union activists who had been working on the nonunion Tug Valley job on June 28, were not assigned to that job on June 30, despite the fact that the Tug Valley job was not yet finished. Instead, when they reported to work on the morning of June 30, Miller and Gartin were sent home while Jones was sent along with Mike Curry to face the pickets at B&C after which they did not work but were sent home.

Union activists Wiley and McNeil, on June 30, were sent to Hobert, a picketed job, and after being turned back, were sent home and did not work. Respondent was aware that neither of these mechanics would cross the picket line. In fact, McLean had, just the day before, questioned McNeil, as to whether he would cross a picket line. When McNeil told McLean that his family had been in the coal business for over a hundred years ''and it ain't really a thing I should do. I know it wouldn't be safe for me or my family,'' McLean stated, ''I respect your decision. I'll let you know.'' Then, the following day, McLean intentionally sent McNeil to a picketed jobsite, knowing full well what would occur.

Mark Curry, Tim Hatfield, and Robert Zastawniak, all mechanics' helpers who had signed cards, had worked on assignments in the shop on June 28 but were sent home by Respondent on June 30, with the explanation that there was no work for them.

Robert Meeks, who had been told that it would be all right for him to take a vacation at this time did, in fact, take his vacation and consequently was absent on June 30. A prounion activist, he too was permanently laid off because of this absence.

John Curry, a card signer and union activist, who drove a parts truck and worked in the warehouse, was also laid off on June 30.

From the facts related immediately above, I conclude that Respondent determined to rid itself of all prounion employees. In order to do so, its chief officers, Dailey and McLean, decided to utilize a very specific prearranged pretext. As both Dailey and McLean testified, Dailey told McLean that they would lay off the people that were not working Friday afternoon, June 30, and would keep the people that were working. They then assigned the five journeymen mechanics to jobs which they knew were being picketed, realizing they would refuse to cross the picket line, for the sole purpose of using as pretext, the fact that they did not work that afternoon. They used the same pretext to lay off Meeks even though he was on vacation. They then told the five mechanics helpers who were also union activists that there was no work for them, then laid them off too, for not working. In order to appear consistent, they felt that they had to lay off

[36] Dailey's testimony that four parts department employees were laid off probably referred to, and included the one parts department employee and three warehousemen/truckdrivers.

anyone else who happened to be absent that day. Thus, Casebolt, Pennington, and Whitt, all journeymen mechanics, who were absent that day but who were not involved with the Union, had to be laid off as well. Similarly, two warehousemen and parts department employee James Ogle who was, like Meeks, on vacation and therefore absent that day, had to be laid off for the sake of consistency. Of the six employees laid off on June 30, who were not union activists, three were rehired. No prounion employee was rehired or recalled.

Although the layoff notice specifically stated that those laid off had no reasonable expectancy of recall, Respondent, in its brief, declares that the layoffs were not permanent and that the laid-off employees are subject to recall. However, Respondent's belated attempt to convert, by declaration, nunc pro tunc, what was clearly a permanent layoff or termination into a temporary layoff with possibility of recall, is devoid of evidentiary support. The three employees whom the Respondent rehired or recalled were clearly not involved in any union activity. No prounion employees were recalled or given any hope of recall. Indeed, all the evidence is to the contrary.

To summarize, I conclude that the prounion employees were laid off June 30 because of their union activities and sympathies and because of their refusal to cross picket lines or work on strike-bound property. I find, further, that the employees who were laid off on June 30, who had not been engaged in these activities were laid off in order to disguise Respondent's true reasons for ridding itself of the prounion employees. I find, therefore, that in the case of each layoff, Respondent violated the Act. With regard to those employees who were laid off because they engaged in union activities and demonstrated their prounion sympathies by refusing to cross picket lines or work on strike-bound property, I find, in light of Respondent's clearly articulated antiunion animus and its commission of independent violations of Section 8(a)(1), that Respondent thereby violated Section 8(a)(1) and (3).[37] I find, further, with regard to those employees laid off by Respondent, in order to support its pretextual reasons and disguise the true reasons for the layoff of the prounion employees, that these layoffs were part and parcel of Respondent's discriminatory acts and were, thus, likewise violations of Section 8(a)(1) and (3).[38]

THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of Respondent set forth above, occurring in connection with its operations described above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices violative of Section 8(a)(1) and (3) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act.

Having found that Respondent unlawfully discharged Darren Gore and unlawfully laid off 18 other employees, I shall recommend that Respondent offer them immediate reinstatement to their former positions, or if such jobs no longer exist, to substantially equivalent positions, without loss of seniority or other rights and privileges, discharging, if necessary, any replacements, and make them whole for any loss of earnings they may have suffered by reason of their unlawful terminations, by payment to them of sums of money equal to the amounts that they normally would have earned from the date of their terminations to the date on which a bona fide offer of reinstatement is made, with interest thereon to be computed in the manner prescribed in *F. W. Woolworth Co*., 90 NLRB (1950); and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[39]

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By maintaining a rule requiring information regarding wages, salary, or other compensation be kept in confidence; unlawfully soliciting grievances; informing employees that it would be futile for them to select the Union as their bargaining representative; and interrogating an employee regarding union activities of other employees, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By discharging Darren Gore and by laying off the following employees because they engaged in union and other concerted activities including refusing to cross picket lines or work on strike-bound property, Respondent has violated Section 8(a)(3) and (1) of the Act:

John Curry	Robert Meeks
Mark J. Curry	Joseph Miller
Michael Curry	Paul R. Schafer
Timothy Hatfield	Richard Wiley
Jody Gartin	Robert Zastawniak
Warnie Jones	Gary McNeil

5. By laying off the following employees in order to support its pretextual reasons for laying off its prounion employees and in order to disguise its true and unlawful reasons for laying off its prounion employees, Respondent has violated Section 8(a)(1) and (3) of the Act:

John Casebolt	John Spears
Timothy Miller	Robert Whitt
James Ogle	Robert Zastawniak

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[40]

[37] *Overnite Transportation Co*., 154 NLRB 1271 (1965), modified 364 F.2d 682 (1966).

[38] *Rich's Precision Foundry*, 250 NLRB 1317 (1980), affd. 667 F.2d 613 (1981).

[39] See generally *Isis Plumbing Co*., 138 NLRB 716 (1962).

[40] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Cecil I. Walker Machinery Company, Inc., Rita, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a rule requiring information regarding wages, salary, or other compensation be kept in confidence.

(b) Unlawfully soliciting grievances.

(c) Informing employees that it would be futile for them to select the Union as their bargaining representative.

(d) Interrogating employees regarding the union activity of other employees.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer immediate reinstatement to the following employees to their former positions of employment or, if such positions no longer exist, to substantially equivalent positions without prejudice to the seniority or other rights or privileges previously enjoyed:

Darren Gore	Joseph Miller
John Casebolt	Timothy Miller
John Curry	James Ogle
Mark J. Curry	Homer Pennington
Michael Curry	Paul R. Schafer
Timothy Hatfield	John Spears
Jody Gartin	Robert Whitt
Warnie E. Jones	Richard Wiley
Gary K. McNeil	Robert Zastawniak
Robert O. Meeks	

(b) Expunge from its files any reference to the unlawful discharge of Darren Gore, and notify him in writing that this has been done and that the discharge will not be used against him in any way.

(c) Make all the employees listed above whole for any loss of pay they may have suffered as a result of their terminations in the manner set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its place of business in Rita, West Virginia, copies of the attached notice marked ''Appendix.''[41] Copies of the notice, on forms provided by the Regional Director for Region 9, shall, after being signed by Respondent's authorized representative be posted immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[41] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''